

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION

DWIGHT GREEN

§

v.

§ CIVIL ACTION NO. 5:15cv21

SCOTT YOUNG, ET AL.

§

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE
AND ENTERING FINAL JUDGMENT

The Plaintiff Dwight Green, a prisoner formerly confined in the Federal Correctional Institution in Texarkana, filed this civil action under Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics, 403 U.S. 388, 91 S.Ct. 1999, 29 L.Ed.2d 619 (1971) complaining of alleged denials of his constitutional rights. This Court referred the case to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges. The named Defendants are Warden Scott Young and Unit Manager Brad Rosiek.

Green complained of false entries being made in his prison files as well as harassment, retaliation, and a false disciplinary case from Rosiek. The Defendants filed a motion to dismiss or for summary judgment arguing Plaintiff failed to exhaust his administrative remedies, he has not stated a claim upon which relief may be granted, and his claims are barred by qualified immunity. The Defendants furnished evidence outside the pleadings and the Magistrate Judge properly construed the motion as one for summary judgment. Fed. R. Civ. P. 12(d).

Green did not file a response to the motion for summary judgment. After review of the pleadings and the summary judgment evidence, the Magistrate Judge issued a Report recommending the motion for summary judgment be granted on the issue of exhaustion of administrative remedies and the lawsuit dismissed without prejudice. Green received a copy of this Report on February 14,

2017, but filed no objections thereto; accordingly, he is barred from *de novo* review by the District Judge of those findings, conclusions, and recommendations and, except upon grounds of plain error, from appellate review of the unobjected-to proposed factual findings and legal conclusions accepted and adopted by the district court. Douglass v. United Services Automobile Association, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*).

The Court has reviewed the pleadings in this cause and the Report of the Magistrate Judge. Upon such review, the Court has determined the Report of the Magistrate Judge is correct. *See United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir.), *cert. denied*, 492 U.S. 918, 109 S.Ct. 3243 (1989) (where no objections to a Magistrate Judge's Report are filed, the standard of review is "clearly erroneous, abuse of discretion and contrary to law.") It is accordingly

ORDERED the Report of the Magistrate Judge (docket no. 24) is **ADOPTED** as the opinion of the District Court. It is further

ORDERED the Defendants' motion to dismiss or for summary judgment (docket no. 22) is **GRANTED** and the above-styled civil action is **DISMISSED WITHOUT PREJUDICE** for failure to exhaust administrative remedies. Finally, it is

ORDERED that any and all motions which may be pending in this action are hereby **DENIED**.

So ORDERED and SIGNED this 21st day of March, 2017.



RODNEY GILSTRAP
UNITED STATES DISTRICT JUDGE